

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PATRICK SCHOENING,

Petitioner-Appellant,

v

TOWNSHIP OF ORION,

Respondent-Appellee.

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UNPUBLISHED

September 15, 2005

No. 253887

Tax Tribunal

LC No. 00-290554

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Petitioner appeals as of right the decision of the Michigan Tax Tribunal denying his request for a rehearing of his tax assessment for residential real property. We affirm.

Petitioner owns a multi-level residence that contains 4,775 square feet of living area and includes an attached three-car garage on a 1-1/2 acre lakefront lot in Clarkston. Petitioner appealed the 2002 and 2003 tax assessments, and the tax tribunal upheld the values. The tax tribunal also rejected respondent's assertion that the true cash value (TCV) should be increased. Petitioner requested a rehearing, and the tax tribunal denied the request.

Plaintiff first argues that the tax tribunal's findings of fact were not supported by competent, material, and substantial evidence. Specifically, he argues that his property was overvalued because: (1) the assessment was based on items that were not features of his house;<sup>1</sup> and (2) three of the houses in the comparable properties used in the assessment had four bedrooms and their values were not adjusted to account for the fact that his house only has three bedrooms.

In the absence of fraud, review of a tax tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. *Danse Corp*

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<sup>1</sup> Plaintiff identifies the following items as errors: the number of walk-out basement doors, the number of basement garage door openers, the number of bathrooms with ceramic tile floors and tub alcoves, the number of two-fixture as opposed to three-fixture bathrooms, and the number of certain appliances.

*v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). The tribunal's findings of fact are conclusive if supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Danse, supra* at 178. Substantial evidence is "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion," but it may be "substantially less than a preponderance." *Inter Cooperative Council v Dep't of Treasury*, 257 Mich App 219, 221; 668 NW2d 181 (2003), quoting *In re Payne*, 444 Mich 679, 692, 698; 514 NW2d 121 (1994).

The petitioner bears the burden of proof in establishing the TCV. MCL 205.737(3); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). In the instant case, the tribunal found that petitioner did not satisfy the burden of proof because the single house sale that he cited as a comparable property was not sufficient to establish the subject property's market value or TCV. The tribunal also determined that petitioner failed to meet his burden because he failed to submit any description about the comparable properties or to make any adjustments necessary to achieve comparability.

In determining the correct assessment amount for real property, the tribunal must make an independent determination of the TCV, the usual price for which the property would sell. *Great Lakes Div, supra* at 389-390. The three accepted methods of valuation include the capitalization-of-income approach, the cost-less-depreciation approach, and the market approach. *Id.* at 390. The tribunal must employ the method that most accurately determines the TCV, and it is not bound to accept the parties' theories of valuation. *Id.* at 389-390.

In the instant case, the tribunal stated that it "recognizes the market approach with support from the cost-less-depreciation method to be the most accurate and thus the best indication of the property's true cash value." The tribunal reviewed and analyzed respondent's market analysis and found that it adequately supported an assessed value (AV) of \$482,170 for 2002 and \$496,740 for 2003 and a TCV of \$964,340 for 2002 and \$993,480 for 2003. The evidence presented by respondent, the five comparable properties with adjustments, was sufficient to support the tribunal's conclusion regarding the property's AV and TCV. See *Inter Cooperative Council, supra* at 221.

Petitioner argues that the valuation was not based on competent evidence because respondent incorrectly included \$18,000 worth of items in its TCV estimate for 2002 and three comparable properties were not adjusted to account for the different number of bedrooms. To preserve an issue for appellate review, it must be properly raised at trial. *Napier v Jacobs*, 429 Mich 222, 227; 414 NW2d 862 (1987). Because petitioner did not argue this issue at the hearing, he waived it on appeal, and we decline to review it.

Petitioner also argues that the tribunal did not make any direct findings of fact or conclusions of law, but merely adopted the findings of the hearing referee. The purpose of the tax tribunal's opinion is to facilitate appellate review, but only a concise statement of facts and conclusions of law is required. MCL 205.751(1); *Great Lakes Division, supra* at 402. The opinion and judgment contained sufficient findings of fact, as the hearing referee summarized both parties' contentions regarding the valuation of the property and made specific findings with respect to the TCV and AV.

Petitioner, citing *Consolidated Aluminum Corp v Dep't of Treasury*, 206 Mich App 222, 238; 521 NW2d 19 (1994), argues that the findings of fact were inadequate because the order denying his request for a rehearing does not specifically adopt or refer to the hearing referee's proposed judgment. However, the pertinent statute requires only that tribunal members rule on requests for a rehearing and decide whether good cause is demonstrated. MCL 205.762(3); *Shapiro Bag Co v Grand Rapids*, 217 Mich App 560, 564; 552 NW2d 185 (1996). The statute does not require that the tribunal provide a statement of facts. See MCL 205.762(3). Here, the tribunal ruled on petitioner's request for a rehearing, determining that he had not demonstrated good cause for a rehearing. The tribunal stated that it had considered the matter and found no error of law or material fact. It also stated that the evidence set forth in the request for the rehearing had been considered by the hearing referee and did not "provide a basis for a rehearing." The tribunal properly denied petitioner's request for a rehearing because evidence that petitioner failed to produce at the hearing cannot be used to establish good cause for a rehearing.

Next, petitioner contends that the tribunal committed an error of law or adopted a wrong principle because it applied an incorrect economic condition factor (ECF) when it calculated the TCV of his property. It is the province of the tax tribunal to apply its expertise to the facts of each case to determine the appropriate method of arriving at the TCV of the subject property. *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 631-632; 462 NW2d 325 (1990). The petitioner has the burden of proof in establishing the TCV of the property. MCL 205.737(3). Because the TCV is calculated using the ECF, it follows that the petitioner also has the burden of establishing that the ECF used by respondent was calculated incorrectly.

Here, petitioner did not present any evidence to rebut respondent's ECF calculation. Petitioner provided his own ECF calculation, which the tribunal determined was incorrect because it was based on the sale of only one house. Pursuant to the Michigan State Tax Commission Assessor's Manual, one sale is insufficient for calculating an ECF. Petitioner contends that the tribunal made an error of law when it adopted respondent's ECF calculation without requiring a detailed explanation of the formula used to calculate the ECF. However, this was not error because respondent did not have the burden of establishing that its TCV calculation was correct. Petitioner also argues that he should be provided the opportunity to challenge respondent's ECF calculation. This argument is meritless because petitioner was afforded a full evidentiary hearing on respondent's valuation of his property. Petitioner had the opportunity to establish his proposed ECF and TCV, but failed to meet his statutory burden of proof.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Hilda R. Gage  
/s/ Kurtis T. Wilder